

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUN 25 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0104-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
CHRISTOPHER ANGELITO VANNATTA,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20054897

Honorable Stephen C. Villarreal, Judge

REVIEW GRANTED; RELIEF DENIED

Christopher A. Vannatta

Hinton, Oklahoma
In Propria Persona

K E L L Y, Judge.

¶1 Following a jury trial, appellant Christopher Vannatta was convicted of aggravated driving under the influence of an intoxicant and driving with an alcohol concentration of .08 or more, both while his license was suspended, canceled, revoked, or restricted. The trial court sentenced him to concurrent, mitigated, eight-year prison terms, enhanced by his two historical prior felony convictions. On appeal, this court affirmed the convictions and sentences.

¶2 Vannatta filed a notice of and petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. In the petition, he contended his sentence had been “illegally enhanced,” his blood test results were “unreliable,” the testimony of the state’s expert witness had been inconsistent, the state’s evidence had therefore been insufficient to convict him, and trial counsel had been ineffective in failing to sufficiently challenge the expert’s testimony. Vannatta also asserted broadly that he had received ineffective assistance of counsel at the “trial, post-trial, appellate, and post-conviction relief proceedings.” The trial court denied relief without an evidentiary hearing, and this petition for review followed. Absent a clear abuse of the trial court’s discretion, we will not disturb its ruling. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We see no such abuse here.

¶3 In its minute entry ruling, the trial court explained that any challenge to the sufficiency of the evidence presented at trial was outside the scope of Rule 32.1. And, although it need not have addressed the issue because Vannatta did not raise it on appeal and it was therefore precluded, *see* Ariz. R. Crim. P. 32.2(a)(3), the court also explained that Vannatta had failed “to show how the trial court abused its discretion in sentencing him.” The court further ruled that trial counsel’s performance had not fallen below “an objective standard of reasonableness” and that Vannatta had failed to establish any prejudice resulting from counsel’s actions. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984) (colorable claim of ineffective assistance requires showing counsel’s performance was substandard and prejudiced defense); *State v. Ysea*, 191 Ariz. 372, ¶ 15, 956 P.2d 499, 504 (1998).

¶4 Vannatta’s petition for review essentially reiterates the arguments he presented in his petition for post-conviction relief below. In addition, he raises issues that

he unsuccessfully attempted to present below. Because the trial court struck Vannatta's motion to amend his pleading, it did not reach those issues. And, this court will not consider for the first time on review issues that have not been ruled on by the trial court. *State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980); *see also* Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review shall contain "[t]he issues which were decided by the trial court and which the defendant wishes to present" for review).

¶5 The trial court clearly identified and correctly resolved the claims Vannatta raised below. Therefore, we adopt its ruling, as no purpose would be served by reexamining it here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court has correctly identified and ruled on issues raised "in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court[']s rehashing the trial court's correct ruling in a written decision").

¶6 In sum, Vannatta has not persuaded us on review that the court's ruling is erroneous. We therefore grant the petition for review but deny relief.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Presiding Judge